

TENNESSEE GENERAL ASSEMBLY  
FISCAL REVIEW COMMITTEE



FISCAL MEMORANDUM

SB 2140 – HB 2809

February 15, 2012

**SUMMARY OF AMENDMENT (013104):** Deletes all language after the enacting clause. Requires legislation to contain express language creating or conferring a private right of action or imposing an affirmative duty of care before the right or duty will exist and prohibits a court, licensing board, or administrative agency, in the absence of express language, from impliedly creating or conferring a private right of action or imposing an affirmative duty of care. Specifies that the language in the proposed legislation is not to be construed to impair a court's ability to recognize a private right of action that was recognized by the courts before the effective date of Tenn. Code Ann. § 1-3-119 as arising under a statute, unless the statute is amended after the effective date of Tenn. Code Ann. § 1-3-119 to expressly bar the private right of action; to create or confer a private right of action or impose an affirmative duty in the absence of a controlling statute on each cause of action contained in the complaint if the action or duty is based on common law; to utilize the doctrine of negligence per se, or to recognize a private right of action commenced by a state or local government entity to collect fees for a governmental service. Specifies that the language in the proposed legislation is not to be construed to impair the ability of a state or local regulatory or licensing agency to enforce administrative or other rules.

FISCAL IMPACT OF ORIGINAL BILL:

NOT SIGNIFICANT

FISCAL IMPACT OF BILL WITH PROPOSED AMENDMENT:

**Unchanged from the original fiscal note.**

Assumptions applied to amendment:

- Specifying the intent not to impair the court's ability to recognize or to create or confer certain rights of action in the absence of a controlling statute, to utilize the doctrine of negligence per se, or to recognize a private right of action commenced by a state or local governmental entity does not result in a fiscal impact to the state trial or appellate courts.
- Specifying the intent not to impair the ability of a state or local regulatory or licensing agency to enforce administrative or other rules does not result in a significant state or local impact.

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- Specifying that this provision applies to each cause of action contained in the complaint will not have a fiscal impact on state or local government.
- Requiring express statutory language creating a private right of action or imposing an affirmative duty of care before one would exist will not result in a fiscal impact to the state trial or appellate courts.

**CERTIFICATION:**

The information contained herein is true and correct to the best of my knowledge.

A handwritten signature in black ink, appearing to read "Lucian D. Geise". The signature is fluid and cursive, with the first name "Lucian" written in a larger, more prominent script than the last name "Geise".

Lucian D. Geise, Executive Director

/lsc